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Comment Text :

--> NOTICE

Re: Draft Supplemental Environmental Impact Statement for a Geological Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (Draft Repository SEIS)

Draft Supplemental Environmental Impact Statement for a Geological Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada - Nevada Rail Transportation Corridor (Draft Nevada Rail Corridor SEIS; and

Draft Supplemental Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geological Repository at Yucca Mountain, Nye County, Nevada (Draft Rail Alignment EIS)

1 [NO FREE AND CLEAR LAND TITLE AS REQUIRED BY NRC

The Corporation of Newe Sogobia is the only 501(c)(3) non-profit organization that exists to improve the economic conditions and social well-being of Western Shoshone people and preserve and support the continuation of their cultural lifeways.

All board members and beneficiaries of services are Western Shoshone.

The actions in the above Draft documents are proposed to take place on lands to which the Western Shoshone hold statutory title through the promulgation and recordation of the Ruby Valley Treaty of 1863 in the U.S. Statutes-at-Large. Therefore Western Shoshone men and women are all parties in interest to this action along with "the people and government of the United States."

The described land and associated plant and animal life are used for shelter, food, clothing, housing and medicine by the Western Shoshone people. The Western Shoshone maintain cultural and traditional use rights to land within the boundaries outlined in the Ruby Valley Treaty of 1863.]

2 [LACK OF VIABLE ALTERNATIVES

Mina Rail Corridor is considered a "non-preferred alternative" because Walker River Paiute Tribe has refused permission for the line to cross their lands. NEPA requires that alternatives that are viable be considered. This route is not a viable or possible alternative. Since no alternatives are presented, the entire draft must be modified to compare viable alternatives.] [No alternative to Yucca Mountain disposal is considered, therefore the entire draft must be modified with viable alternatives.] 3

INSUFFICIENT INFORMATION

4 [Insufficient information is provided in the above drafts to assess the following concerns:

The Western Shoshone are concerned that there may be cumulative impacts to ground and surface water quality (including consequential impacts to humans, aquatic plants, avian life, animals, and the food chain) during construction of a geological nuclear waste repository and any rail line, as a result of the use of the repository or rail line, or as a result of any accidental release or terrorist attack. Impacts in association with these resources and conditions need to be further analyzed for the proposed actions for each alternative considered.

The Western Shoshone are concerned that there may be many cumulative impacts to the health of Native people who gather, consume, and use more wild game, fish, and plants for food, medicine, housing, clothing, implements, and art, than non-Indians. Impacts in association with these resources and conditions need to be further analyzed for the proposed actions for each alternative considered.

The Western Shoshone are concerned that there may be cumulative impacts to air quality (including impacts to humans, aquatic plants, avian life, and animals) both during construction of the repository and any rail line, and in the event of accident, accidental release, or terrorist attack, and also that there may be a potential for dispersal of radio-contaminants, rendering large areas uninhabitable. Impacts in association with these resources and conditions need to be analyzed completely for the proposed actions for each alternative considered. In a worst case scenario, with the types of radioactive material being transported, how long would it take for humans to gain re-entry into a

contaminated area, which is still our sacred land?] ... continued below

- 5 [The Western Shoshone are concerned that there may be impacts to ongoing use of traditional areas for ceremonial, hunting and gathering purposes and visitation of cemeteries and burial sites, and to future access to areas in the event of rail accident, accidental release, or terrorist attack. Impacts in association with these resources and conditions need to be analyzed completely for the proposed actions for each alternative considered.]

The Western Shoshone are concerned that there may be impacts to existing burial sites during construction of the rail line including potential removal of remains and funerary objects, and other desecration. The Western Shoshone belief is that remains should be left where they are found. Impacts need to be analyzed for the proposed actions for each alternative considered and mitigation plans discussed with the Western Shoshone traditional government.]

- ... 4 [The Western Shoshone are concerned that there may be cumulative impacts that have the potential to increase noxious weeds due to the construction disturbance and use of the repository and any rail lines. Impacts regarding noxious weeds on the proposed areas and contiguous areas that would be impacted by spread of those noxious weeds, including potential pesticide drift, need to be analyzed for the proposed actions for each alternative considered.] ... continued below

- 6 [The Western Shoshone are concerned that there may be a potential for loss of land for their desired economic development. Impacts need to be analyzed for the proposed actions for each alternative considered.] - continued below

The Western Shoshone are concerned that there may be a potential economic loss to them resulting from 1) restriction of use of land and 2) by public perception of safety of certain commodities that could provide viable business and industry opportunities unrelated to Yucca Mountain activities. Economic impacts in association with each of these limitations need to be analyzed for the proposed actions for each alternative considered.]

- 7 [The Western Shoshone are concerned about the adequacy of Emergency Response (including but not limited to time to respond, distance, and quality of accessible routes from accident sites to existing roads, availability of equipment and trained equipment users, proximity of medical facilities, funding of communities for education and equipment). Impacts of each aspect of Emergency Response needs to be analyzed for the proposed actions for each alternative considered at all locations along all of the proposed routes.]

- ... 4 [The Western Shoshone are concerned about the cumulative impacts of combinations of radionuclides with existing residual radiation, and with other hazardous chemicals or substances that might be carried on a multi-use rail line, especially in cases of accident, accidental release, or terrorist attack. Impacts in association with these combinations need to be analyzed for the proposed actions for each alternative considered.]

The Western Shoshone are concerned that there may be cumulative impacts including but not limited to impacts on social, spiritual, economic, psychological, cultural identity) to their Nation from the loss of use of their land and damage to cultural resources such as sage grouse, chuckawalla, desert tortoise, golden eagles, big horn sheep, deer, antelope, and wild horses, etc. Impacts in association with these resources and conditions need to be analyzed completely for the proposed action for each alternative considered, and the Western Shoshone National Council should be consulted.]

UNANSWERED QUESTIONS

- 8 [Describe the distance or radius from any rail line that is being used in your

assessment of environmental effects. In a worst case scenario, how far from a rail right of way have environmental effects been measured? Does the rail line right of way width correspond with rail line specifications of the current Resource Management Plan in each area?]

- 9 [The worst case scenario which is unaddressed, should be included as one of the action alternatives. To say that the possibility is "not reasonably foreseeable" is unscientific without a reasonable probability factor for examination. Probability statistics should be presented for all decisions, e.g. terrorist attack, and in all possible scenarios which have not been enumerated. The waste will be dangerous for thousands of years. How will conditions be modified to account for different threat scenarios due changes in technology?

What statistical probability of risk is acceptable to you? In other words, what probability of a "worst case scenario" event is acceptable to you? How many deaths or serious health impacts are acceptable in a worst case scenario?]

- 10 [If new, increased health risks from radiation exposure or residual radiation exposure are found during the life of the repository and rail line, by what process will shipment and storage policies be amended?]

- 11 [You have not provided baseline health data, including cause of death analysis, for the communities surrounding the affected area, for the purpose of future comparison. Are such health analyses being planned by any agency in order to monitor changes in health related to exposure? Without these studies, illnesses and changes in health will not be able to be linked to the proposed actions.]

- 12 [During the construction of any rail line, will private property owners be displaced or have their property purchased by a federal agency? Will one of the federal agencies use eminent domain or condemnation of private property?]

- 13 [Please discuss road closures that would occur as a result of this plan or any worst case scenario and mitigation of this loss of access to travelers.]

- 14 [The current Ely Resource Management Plan does not account for or permit the Yucca Mountain site or rail lines to the site. The proposed Ely Resource Management Plan, which is not in effect at this time and has not been approved, mentions its possibility in a single paragraph. Law suits can arise from construction of a facility or rail line that is not covered in the Resource Management Plan of an area. The repository and rail lines must be described in detail in the Plans in order to be authorized. The rail lines were not discussed during deliberation over development of the plan. How will the Resource Management Plan or the Resource Management Plans of any BLM service area be amended to account for a rail line/repository? How do these drafts relate to any and all Resource Management Plans or Forest Service Plans in all the alternative areas?]

- 15 [No final cask designs are in the drafts, so it is impossible to assess their impact or transportation. In the words of the DOE at the Pahrump 2007 quarterly meeting of NRC/DOE, "it's just a box!" That attitude is unacceptable.]

- 16 [Why was the U.S. Transportation Safety Board not lead agency on the draft rail line? The rail line would pass through communities with unique situational, geographic, and population factors that have not been analyzed.]

- 17 [Land along the Caliente route has been withdrawn from mineral exploration using a U.S. regulation for withdrawal of land. How can a regulation trump a U.S. law, the Mining Law? If it can, why have Western Shoshone tribes and

environmental groups been unable to use the same withdrawal to preserve water and cultural sites and Native cemetery locations?]

ENVIRONMENTAL JUSTICE

- 18 [Direct consultation and coordination on a Nation-to-Nation basis, as mandated by the U.S. Constitution Article VI ["treaty is the supreme law of the land" and "judges in every state shall be bound thereby" clarified by court decisions that the Treaty of Ruby Valley is still in "full force and effect" (NV District Court, 1986, Findings of Fact No. 4; Ninth Circuit Court, 1989)] shall be conducted with the Western Shoshone National Council, successors to the signatories of the Treaty of Ruby Valley of 1863.

In fact, the U.S. cannot show free and clear title to the proposed lands to be used for the repository or the rail lines. The Ruby Valley Treaty is a significant cloud on the title. The existing Yucca Mt facility was built, without authorization by Western Shoshone, on a BLM right of way. BLM should provide documentation wherein the Western Shoshone hired or contracted the BLM to manage their treaty lands.

While representatives of various tribes attended informational meetings, there was no request for the direct involvement and no face to face meeting between DOE officials capable of making decisions and any Tribal Council in the preparation of the EIS. Some Tribal representatives have attended a few of the meetings of the American Indian Writers Subgroup. They were told that meetings did not constitute consultation, but were informational meetings. The Consolidated Group of Tribes and Organizations is not governmental agency. Federally recognized tribes have been waiting for DOE, BLM, or both to request consultation in the manner required by law and Executive Order. This has not happened. Federally recognized tribes can not affect or control lands that occur outside of their trust boundaries. Only the Western Shoshone Nation through the Western Shoshone National Council, successors to the Ruby Valley Treaty, controls these lands.]

- 19 [The draft EIS's claims that DOE did not identify any high and adverse potential impacts to "sub-sections of populations", thus there is no environmental justice issue. This argument is ludicrous. Federal agencies illegally removed Western Shoshone people from their treaty lands by force, then built fences, and kept them from their homelands using armed guards, helicopters and M-16's. In the event, no matter how unforeseeable, of a worst case scenario, Western Shoshone and Paiute people would NEVER be able to return to hold ceremonies or visit their dead relatives. They would be unable to harvest plant and animal medicines that only grow in these areas and that have kept them healthy in times past. This will result in serious health events. These are serious violations of religious freedom and basic human rights.]

20 [We are enclosing the ruling by the UN Committee on the Elimination of Racial Discrimination. According to the ruling, you must stop all permitting activities until a solution is reached by the US government and the Western Shoshone Nation.]

This 10th day of January, 2008
John Wells, Chairman
For the Corporation of Newe Sogobia
Cc: Committee on the Elimination of Racial Discrimination

COMMITTEE FOR THE ELIMINATION
OF RACIAL DISCRIMINATION
Sixty- eighth session

Geneva, 20 February - 10 March 2006

EARLY WARNING AND URGENT ACTION PROCEDURE

DECISION 1 (68)

UNITED STATES OF AMERICA

A. Introduction

1. At its 67th session held from 2 to 19 August 2005, the Committee considered on a preliminary basis requests submitted by the Western Shoshone National Council, the Timbisha Shoshone Tribe, the Winnemucca Indian Colony and the Yomba Shoshone Tribe, asking the Committee to act under its early warning and urgent action procedure on the situation of the Western Shoshone indigenous peoples in the United States of America.

2. Considering that the opening of a dialogue with the State party would assist in clarifying the situation before the submission and examination of the fourth and fifth periodic reports of the United States of America, due on 20 November 2003, the Committee, in accordance with article 9 (1) of the Convention and article 65 of its rules of procedure, invited the State party, in a letter dated 19 August 2005, to respond to a list of questions, with a view to considering this issue at its 68th session.

3. Responding to the Committee's letter, the State party, in its letter dated 15 February 2006, stated that its overdue periodic reports are being prepared and that they will include responses to the list of issues. The Committee regrets that the State party has not undertaken to submit its periodic reports by a specific date, that it has not provided responses to the list of issues by 31 December 2005 as requested, and that it did not consider it necessary to appear before the Committee to discuss the matter.

4. The Committee has received credible information alleging that the Western Shoshone indigenous peoples are being denied their traditional rights to land, and that measures taken and even accelerated lately by the State party in relation to the status, use and occupation of these lands may cumulatively lead to irreparable harm to these communities. In light of such information, and in the absence of any response from the State party, the Committee decided at its 68th session to adopt the present decision under its early warning and urgent action procedure. This procedure is clearly distinct from the communication procedure under article 14 of the Convention. Furthermore, the nature and urgency of the issue examined in this decision go well beyond the limits of the communication procedure.

B. Concerns

5. The Committee expresses concern about the lack of action taken by the State party to follow up on its previous concluding observations, in relation to the situation of the Western Shoshone peoples (A/56/18, para. 400, adopted on 13 August 2001). Although these are indeed long-standing issues, as stressed by the State party in its letter, they warrant immediate and effective action from the State party. The Committee therefore considers that this issue should be dealt with as a matter of priority.

6. The Committee is concerned by the State party's position that Western Shoshone peoples' legal rights to ancestral lands have been extinguished through gradual encroachment, notwithstanding the fact that the Western Shoshone peoples have reportedly continued to use and occupy the lands and their natural resources in accordance with their traditional land tenure patterns. The Committee further notes with concern that the State party's position is made on the basis of processes before the Indian Claims Commission, "which did not comply with contemporary international human rights norms, principles and standards that govern determination of indigenous property interests", as stressed by the Inter-American Commission on Human Rights in the case *Mary and Carrie Dann versus United States* (Case 11.140, 27 December 2002).

7. The Committee is of the view that past and new actions taken by the State party on Western Shoshone ancestral lands lead to a situation where, today, the obligations of the State party under the Convention are not respected, in particular the obligation to guarantee the right of everyone to equality before the law in the enjoyment of civil, political, economic, social and cultural rights, without discrimination based on race, colour, or national or ethnic origin. The Committee recalls its General recommendation 23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, control and use their communal lands, territories and resources, and expresses particular concern about:

a) Reported legislative efforts to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers.

b) Information according to which destructive activities are conducted and/or planned on areas of spiritual and cultural significance to the Western Shoshone peoples, who are denied access to, and use of, such areas. It notes in particular the reinvigorated federal efforts to open a nuclear waste repository at the Yucca Mountain; the alleged use of explosives and open pit gold mining activities on Mont Tenabo and Horse Canyon; and the alleged issuance of geothermal energy leases at, or near, hot springs, and the processing of further applications to that end.

c) The reported resumption of underground nuclear testing on Western Shoshone ancestral lands;

d) The conduct and / or planning of all such activities without consultation with and despite protests of the Western Shoshone peoples;

e) The reported intimidation and harassment of Western Shoshone peoples by the State party's authorities, through the imposition of grazing fees, trespass and collection notices, impounding of horse and livestock, restrictions on hunting, fishing and gathering, as well as arrests, which severely disturb the enjoyment of their ancestral lands.

The difficulties encountered by Western Shoshone peoples in

appropriately challenging all such actions before national courts and in obtaining adjudication on the merits of their claims, due in particular to domestic technicalities.

C. Recommendations

8. The Committee recommends to the State party that it respect and protect the human rights of the Western Shoshone peoples, without discrimination based on race, colour, or national or ethnic origin, in accordance with the Convention. The State party is urged to pay particular attention to the right to health and cultural rights of the Western Shoshone people, which may be infringed upon by activities threatening their environment and/or disregarding the spiritual and cultural significance they give to their ancestral lands.

9. The Committee urges the State party to take immediate action to initiate a dialogue with the representatives of the Western Shoshone peoples in order to find a solution acceptable to them, and which complies with their rights under, in particular, articles 5 and 6 of the Convention. In this regard also, the Committee draws the attention of the State party to its General recommendation 23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, control and use their communal lands, territories and resources.

10. The Committee urges the State party to adopt the following measures until a final decision or settlement is reached on the status, use and occupation of Western Shoshone ancestral lands in accordance with due process of law and the State party's obligations under the Convention:

a) Freeze any plan to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers;

b) Desist from all activities planned and/or conducted on the ancestral lands of Western Shoshone or in relation to their natural resources, which are being carried out without consultation with and despite protests of the Western Shoshone peoples;

c) Stop imposing grazing fees, trespass and collection notices, horse and livestock impoundments, restrictions on hunting, fishing and gathering, as well as arrests, and rescind all notices already made to that end, inflicted on Western Shoshone people while using their ancestral lands.

11. In accordance with article 9 (1) of the Convention, the Committee requests that the State party provide it with information on action taken to implement the present decision by 15 July 2006.
